

MINUTES
COMMISSION MEETING
OPEN SESSION

May 15, 2013

The meeting was called to order by Chairman Phillip Florence, Jr., at 9:48 a.m. Other members present were Richard H. Fitzgerald, Priscilla L. Tanner, Twana Burris-Alcide, James I. Warren, III, and G. Carlton Manley.

The news media was duly notified.

Staff present:

Mr. Herbert R. Hayden, Jr., Executive Director
Ms. Cathy L. Hazelwood, Deputy Director/General Counsel
Mr. Daniel F. Choate, Investigator
Mr. Jimmy Bagnall, Investigator
Mrs. Ami Franklin, Assistant Director, Administration
Miss Kristin M. Smith, Administrative Coordinator
Mrs. Karen A. Wiggins, Administrative Specialist

Others present:

Chris Trainor

Chairman Florence welcomed everyone and reminded the Commissioners to use the microphones when speaking. Mr. Hayden asked to recognize the State Ethics Commission's newly-appointed Commissioner, Twana Burris-Alcide of the Fifth District. Mr. Hayden also announced that at the end of the meeting Mrs. Tanner would be recognized for her years of service with the Ethics Commission since this was her last meeting, and reminded all the other Commissioners that they were still on the Board until otherwise notified.

Chairman Florence then proceeded, noting that there was an Amended Agenda in the Green Folder.

MINUTES

Motion was made by Mr. Warren, seconded by Mrs. Tanner, to accept the Minutes as presented. Chairman Florence asked for discussion or opposition. There being none, the motion carried with no opposition to approve the Open and Executive Session Minutes from the March 20, 2013 Commission meeting.

OFFICE OPERATIONS

Budget 2012/2013

Mr. Hayden presented for information only the budget for the fiscal year July 1, 2012 to May 13, 2013, noting nothing different than what is normally presented.

Compliance Reports

Mr. Hayden presented for information only the Compliance reports for March and April, 2013. Mr. Hayden gave a brief explanation of GEAR, and briefed newly-appointed Commissioner Twana Burris-Alcide of GEAR and other collections. Mrs. Alcide asked for clarification on the training sessions. Mr. Hayden responded.

APPEALS

Mr. Hayden asked to take up the Appeals, and explained to the new commissioners that these appeals are individuals who failed to file SEIs and fines were levied; the process allows for them to appeal to the Executive Director; if the Executive Director denies the appeal, they can then appeal to the full Commission.

Mr. Hayden reminded the Commissioners of the current policy that staff has provided copies of a summary of each individual's background, information on the penalties and staff recommendation, copies of the letters of appeals from the individuals, and then any supportive documentation and correspondence that may be applicable to the case. The appeal statement is in writing, staff recommendation is in writing, and unless there are questions, there will be no presentation or verbal recommendation.

Norris Ashford

Documentation was reviewed. Discussion ensued as to mandatory electronic filing and any mandatory training sessions. Staff responded. For the benefit of the new commissioners, Mr. Manley clarified the Commission's policy on sympathy for first-time filers vs. seasoned filers. Discussion ensued. Dr. Fitzgerald requested that the next time there was a modification to the electronic filing system, change the verbiage on the "Saved" button to "Saved-but not Filed." Discussion ensued as to the cost of modifying

the system and the degree of friendliness using the electronic system. Mr. Manley made a motion, seconded by Mrs. Tanner, to accept staff recommendation that the appeal be denied, and a late filing payment of \$100 be paid. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

Reese R. Boyd, III

Documentation was reviewed. Discussion ensued as to notification of violation, current penalty amount (\$2,300), actual date for being in compliance, and reason for the high amount of penalty at the time of filing. Staff responded. Further discussion ensued as to payment of the penalty. Staff responded that they were holding Mr. Boyd's \$2,300 check. Mr. Warren made a motion, seconded by Mr. Manley, to reduce the fine to \$250, adding that staff would send Mr. Boyd a letter advising him of the Commission's decision, and ask Mr. Boyd to send a new check for \$250, and upon receipt of the new \$250 check, staff would send back the \$2,300 check. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

ADVISORY OPINION

SEC AO2013-001 Acceptance of Gifts

Ms. Hazelwood presented to the Commission a statement and material of events concerning Coastal Carolina University's Professional Golf Management instructors accepting a limited amount of complimentary PGA merchandise to assist them in the University's golf management program. The question was should the merchandise become the property of the University or the instructors?

Discussion ensued as to private businesses providing both financial and material support to assist public agencies in carrying out their mandated responsibilities. Clarification was asked concerning undue influence on officials receiving free stuff, agreed-upon contracts; and people receiving items because of their position with a university which makes those items property of that university. Further discussion ensued as to investigating the relationship in detail in these situations as they are presented; i.e., manufacturers' agreed-upon-contracts vs. merchandise given to students and employees.

Mr. Manley moved that the Commission concur with the Advisory Opinion as written. Dr. Fitzgerald wanted confirmation that this new opinion did not abrogate Advisory Opinion AO94-014 mentioned in Ms. Hazelwood's statement. Mr. Warren asked the Commission to consider deleting the part where it says the merchandise becomes a part of the University and not the instructors—as long as the receipt of it does not violate Section 8-13-705(B). This would make it acceptable to take possession as long as it was not in violation of any ethics law. Further discussion ensued as to clarifying if the recipient had to report the gift on their SEI to the State Ethics Commission. Staff responded that these VPs and instructors were not required to file.

Ms. Hazelwood said she would draft a revised Conclusion and send it to the Commissioners for their action. Dr. Fitzgerald asked if the vote could be done by e-mail. Mr. Hayden said they could go ahead and vote on an amendment now, but all agreed to wait on Ms. Hazelwood's draft.

DISCUSSION

Legislation

Mr. Hayden presented to the Commission a status on bills of interests in the House and Senate: H.3945 and S.338 (definition of committee and lobbying fee increase); S.2 (fix how candidates get on ballot); S.601 (defines/studies local lobbying); H.3772 (reconstitutes the Ethics Commission's membership and sets up the Public Integrity Unit); and S.405 (takes away jurisdiction of Administrative Law Judges); Mr. Manley asked for clarification as to how someone would be classified for lobbying at the State House. Dr. Fitzgerald asked for a status on the Public Integrity Unit and clarification on moving the Administrative Law Judges from the Commission's jurisdiction. Staff responded. Discussion ensued as to possible actions by the Legislature before going home for the year.

Commissioner Appointment Update

Mr. Hayden announced that, other than Mr. Warren and Mrs. Alcide, there were no new appointments to the State Ethics Commission at this time, and reminded all the Commissioners, with the exception of Mrs. Tanner's term ending, everybody is safe until June 30, 2013.

Cost of Non-Compliance Complaints

Mr. Hayden asked the Commissioners to review the information in their Green Folder concerning this issue. After reviewing the material, Chairman Florence moved to take a break, because he felt that there was going to be a lot of discussion and questions with this issue. All agreed.

POINT OF ORDER

Chairman Florence called the meeting back to order. Dr. Fitzgerald asked to recognize a new addition to Chairman Florence's family: a newborn son, Cameron Florence, born May 10. Everyone gave congratulatory comments.

Cost of Non-Compliance Complaints (continued)

The meeting resumed. Mr. Hayden gave a history of past cases with substantial penalties of five figures reduced down to three figures, wherein staff put in a tremendous amount of time; however, when the cases came before the Commissioners as judge, the penalties were drastically reduced. Mr. Hayden then presented his memo to the Commission, highlighting the deadline requirements which the law says reports

have to be filed; the public's right to know of any campaign activity; process for an issue to get to the complaint level, and costs for staff's handling an issue to the complaint level. There was considerable discussion concerning the Executive Director's waiver process; the appeals process before the Commission; respondent showing up vs. not showing up at Commission meeting; whining and complaining of respondents when they do show up; and clarification of the definition of extenuating circumstances and how issues get to the complaint level vs. if the letter of the law was followed, there would be no one brought before the Commission. Discussion ensued again by Commissioners and staff that extenuating circumstances is not set up by law but by policy of the Commission. For the benefit of the new commissioners, examples were given by Commissioners of past extenuating circumstances where the penalty was waived or drastically reduced.

Further discussion ensued as to amending the statute to make changes for defining or listing extenuating circumstances. Dr. Fitzgerald was opposed to any action that would put something in the statute for creating a list of extenuating circumstances and sticking to the "Red Book." Mrs. Alcide asked for clarification on the Commission's primary purpose and her duties as one of the Ethics Commission members. Discussion and responses ensued by staff and Commissioners. Clarification was asked for the section of law for a right of appeal. Staff responded. Further discussion ensued as to the different courts which would hear Ethics Commission appeals, the duties of the Ethics Commission members, the current \$5,000 cap; criminal penalties; and public's perception that the State Ethics Commission is soft.

Mr. Manley asked for a procedure to be set up that when Ms. Hazelwood has a client under oath, the timeframe for notifying the respondent of a violation and the time the respondent filed is made clear to the Commission. Staff agreed. It was also agreed that the "cost sheet" for a Non-Compliance Complaint be put in each Commissioner's meeting folder as a reference. Dr. Fitzgerald asked about adding administrative costs to a fine if there was a lot of time spent on the matter and the penalty was only for \$200. Commissioners and staff agreed.

Chairman Florence asked for any further discussions, there being none, he requested, and with unanimous consent, everyone took a 5-minute break.

EXECUTIVE SESSION

Chairman Florence asked for a motion to go into Executive Session. A motion was made by Dr. Fitzgerald, seconded by Mrs. Tanner, to go into Executive Session. The motion carried.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mr. Manley, seconded by Mrs. Tanner and Mrs. Alcide, to adopt and ratify actions taken in Executive Session. The motion carried.

COMMISSIONER RECOGNITION

All of the staff and Commissioners stood as Chairman Florence presented to Mrs. Tanner a plaque in recognition of her nine years of service as a Commission Member to the State Ethics Commission. Mrs. Tanner gave a statement of appreciation for her plaque, and thanked the Commissioners and staff for being so kind to her over the years.

ADJOURNMENT

A motion was made, with unanimous consent, to adjourn. The motion carried.

Respectfully submitted,

Karen A. Wiggins
Administrative Specialist